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EXAMINER

BEKERMANN, MICHAEL

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3622

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GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/921,332
Filing Date: August 02, 2001
Appellant(s): BARSNESS ET AL.

Scott A. Stinebruner
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/20/2006 appealing from the Office action mailed 6/16/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2004/0172415

MESSINA

09-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Messina (U.S. Pub No. 2004/0172415).

Regarding claims 1-6, 8, 9, 17-21, 23, 24, and 31, Messina teaches a crawler module (operating over a communications network) that searches through multiple message boards and news groups (inherently accessible to multiple individuals) posting advertisements in reply to particular messages whenever the messages are relevant to the advertisement. Messina teaches the crawler module as retrieving postings, and this is taken to be receiving (Paragraph 0075). Messina doesn't specify the original message as containing a query, however Messina does teach the crawler module as only replying to particular messages. Appellant explains in the specification that query detection algorithms are well known in the art (Page 17, Lines 21-22). It would have been obvious to one having ordinary skill in the art at the time the invention was made

to restrict Messina's crawler module to reply to only queries using a well-known query detection algorithm to augment the crawler's logic. This would better target a message-board user as one who is seeking advice, so that user might not frown upon an advertisement as a reply. Any reply (Messina's replies identify information sources) to a query is taken to be an answer to that query.

Regarding claims 7 and 22, Messina does not specify message boards and news groups as having memberships. Official notice is taken that it is old and well known for message boards to require membership. Message boards have required users to register nick names (or handles) so that no one can impersonate anyone else. It would have been obvious to one having ordinary skill in the art at the time the invention was made to require membership to Messina's message boards.

Regarding claims 10, 12, 13, 25, and 27, Messina's crawler module searches through forums. The exchange of messages from one person to another is taken to be chat. The message board contains these messages, and therefore is taken to be a virtual chat room.

Regarding Claims 11 and 26, Messina doesn't specify the crawler module as searching through and responding to emails. Official notice is taken that a listserv is a type of newsgroup that is operated over email. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the crawler module search messages in any type of electronic community including a listserv. This would allow the invention to reach more users.

Regarding claims 14 and 28, if there is a message posted on an electronic community, that message can inherently be responded to (or answered).

Regarding claims 15 and 29, Messina doesn't specify whether the crawler module determines if a post has already been answered. It would have been obvious to one having ordinary skill in the art at the time the invention was made to not answer the same post twice. Users would not appreciate the spam otherwise.

Regarding claims 16 and 30, Messina teaches the posting of links to various websites, online forums, and newsgroups. These are all taken to refer to different advertisements, and a selection process to determine what to post is inherent.

(10) Response to Argument

Appellant argues that Examiner relies solely on Appellant's disclosure to provide evidence of a motivation to modify Messina. Examiner would like to point out that Messina does not limit his crawler module to questions, but to all types of posts. Messina teaches replying to the specific content of a post. The crawler is capable of looking for posts with question marks (Appellant admits such technology is well known), and therefore, there is a reason to combine Appellant's admitted prior art with the reference.

Further on this subject, Examiner believes that one skilled in the art would have intended the crawler to search for queries simply because it is an obvious, common sense thing to do. In many situations there is neither a motivation or evident lack of

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motivation to make a modification articulated in cited references. Numerous scenarios typically find the prior art reference disclosing aspects of claimed subject matter, but fail to specifically point the way toward the combination to arrive at Appellant's invention. A judgment must be made whether a person of ordinary skill in the art would have had sufficient motivation to combine individual elements forming the claimed invention, as in this particular situation. **In re Clinton, 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976).**

Appellant argues that Messina discloses only replies to messages, not replies to queries included in messages. Examiner would like to point out another line of reasoning that the content of a message board post and the content of a reply to that post constitutes non-functional descriptive material. Whether the user posts "I like Cajun cooking!" or "Does anyone else like Cajun cooking?" or "How much is that doggy in the window?", Messina's crawler module contains the same functionality as Appellant's claimed invention. While Appellant is attempting to limit the invention to one specific area (involving non-functional descriptive material no less), Messina's crawler still operates with the same, if not more, functionality than Appellant's invention.

Appellant argues to have clearly distinguished the concept of an "answer" from a "reply". Examiner would like to point out yet another line of reasoning that any individual who posts to an online message board (community) is inherently asking the question "what do you think about what I have to say". Any response to this inherently asked question would therefore be an answer to that question.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Michael Bekerman 

Conferees:

Jeffery Carlson



**JEFFREY D. CARLSON
PRIMARY EXAMINER**

Vincent Millin

